

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

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|--------------------------------|---|----------------------------------|
| PHILLIP QUINN | : | |
| Plaintiff | : | CIVIL ACTION NO. 3:18-632 |
| v. | : | (JUDGE MANNION) |
| BRENDA L. TRITT, et al. | : | |
| Defendants | : | |

ORDER

Presently before the court is the report and recommendation (“Report”) of Magistrate Judge Karoline Mehalchick ([Doc. 27](#)), which recommends that two motions to dismiss, ([Doc. 2](#)) ([Doc. 4](#)) filed in the above-captioned matter, be granted and the plaintiff’s motion for a preliminary injunction ([Doc. 12](#)) be denied. No party has filed objections to the Report. Upon review of the Report and related materials, the Report of Judge Mehalchick will be adopted in its entirety.

Where no objections are made to a report and recommendation, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” [Fed.R.Civ.P. 72\(b\)](#), advisory committee notes; see also [Univac Dental Co. v. Dentsply Intern., Inc.](#), 702 F.Supp.2d 465, 469 (2010) (citing [Henderson v. Carlson](#), 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give

some review to every Report and Recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept or modify, in whole or in part, the findings or recommendations made by the magistrate judge. [28 U.S.C. §636\(b\)\(1\)](#); [M.D.Pa. Local Rule 72.3](#).

On July 21, 2017, the plaintiff, who is currently incarcerated, filed a *pro se* complaint in the Court of Common Pleas in Schuylkill County, Pennsylvania alleging that the water at State Correction Institute—Frackville is contaminated, which resulted in his bacterial infection. On January 26, 2018, the state court sustained the defendants’ preliminary objections and granted leave to the plaintiff to file an amended complaint. In his amended complaint, the plaintiff alleges a state law claim of negligence and a claim of deliberate indifference under the Eighth Amendment of the United States Constitution.

Thereafter, on March 20, 2018, defendants Kathy Brittain, Brenda Tritt, Joseph Sankus, and Daniel Rhone (collectively “DOC defendants”) filed a notice of removal with this court. ([Doc. 1](#)). On March 27, 2018, the DOC defendants filed a motion to dismiss under [Federal Rules of Civil Procedure 12\(b\)\(5\)](#) and 12(b)(6) or, in the alternative, a motion for summary judgment under [Federal Rule of Civil Procedure 56](#). ([Doc. 2](#)). Then, on April 5, 2018, defendants Schuylkill County Municipal Water Authority and its Executive

Director, Pat Caulfield (collectively “SCWA defendants”) filed a motion to dismiss under [Federal Rule of Civil Procedure 12\(b\)\(6\)](#) or, in the alternative, a motion for summary judgment under [Federal Rule of Civil Procedure 56](#). ([Doc. 4](#)). In their brief, the SCWA defendants allege they were never served with the plaintiff’s amended complaint, but acknowledge they received it with the DOC defendants’ notice of removal. On June 11, 2018, the plaintiff filed a motion for preliminary and permanent injunction ([Doc. 12](#)) claiming that he has been harassed, intimidated, and prevented from accessing materials for this lawsuit.

As it stands currently, the plaintiff has failed to state a claim upon which relief can be granted. However, in light of the plaintiff’s *pro se* status, the court will afford him the opportunity to amend his complaint. In addition, the plaintiff has failed to demonstrate that he is likely to succeed on the underlying merits of his case, so his motion for preliminary injunction fails. The court has reviewed Judge Mehalchick’s assessment of the instant motions and agrees with the sound reasoning which led her to the conclusions in her Report. Moreover, the court finds no clear error on the face of the record. As such, the court adopts the reasoning of Judge Mehalchick as the opinion of the court.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1)** the Report of Judge Mehalchick ([Doc. 27](#)) is **ADOPTED IN ITS ENTIRETY**;
- (2)** the DOC defendants' motion to dismiss ([Doc. 2](#)) is **GRANTED**, and plaintiff's amended complaint is **DISMISSED WITHOUT PREJUDICE** as to the DOC defendants;
- (3)** the SCWA defendants' motion to dismiss ([Doc. 4](#)) is **GRANTED**, and plaintiff's Eighth Amendment and negligence claims are **DISMISSED WITH PREJUDICE and WITHOUT PREJUDICE**, respectively;
- (4)** the plaintiff shall file a second amended complaint that corrects the deficiencies identified in Judge Mehalchick's Report, if he still wishes to pursue this action, no later than **February 27, 2019**;
- (5)** the plaintiff's motion for a preliminary injunction ([Doc. 12](#)) is **DENIED**; and
- (6)** the above-captioned case will be remanded to Judge Mehalchick for further proceedings.

s/ *Malachy E. Mannion*

MALACHY E. MANNION
United States District Judge

DATE: January 30, 2019

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